Filed 9/19/06 In re Connor G. and Winona G. CA2/5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re CONNOR G. and WINONA G., Persons Coming Under the Juvenile Court Law.	B189754 (Los Angeles County Super. Ct. No. CK55912)

LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

ARLENE G. and JUAN G.,

Defendants and Appellants,

and

RUBY G.,

Appellant.

APPEAL from an order the Superior Court of the County of Los Angeles, Emily Stevens, Judge. Affirmed.

Janice A. Jenkins, under appointment by the Court of Appeal, and Arlene G., in propia persona, for Defendant and Appellant Arlene G.; Sharon S. Rollo, under appointment by the Court of Appeal, and Juan G., in propria persona, for Defendant and Appellant Juan G.; Ruby G., in propia persona.

No appearance by Plaintiff and Respondent.

Arlene G. (mother), Juan G. (father), and Ruby G. (grandmother), the mother, father, and maternal grandmother, respectively, of Connor G. and Winona G., appeal from the juvenile court's orders denying petitions filed by father and mother under Welfare and Institutions Code[1] section 388 seeking reinstatement of reunification services, or in the alternative, placement of the children with grandmother, and from the court's order terminating mother's and father's parental rights. We affirm the orders.

We appointed separate counsel to represent mother and father in this appeal. After examination of the record, counsel for each of mother and father filed a letter pursuant to *In re Sade C.* (1996) 13 Cal.4th 952, 959, indicating an inability to find any arguable issues. On May 25, 2006, we advised mother, father, and grandmother that each of them had 30 days in which to submit any contentions or arguments they wished us to consider.

A. Mother's, Father's and Grandmother's Contentions

On June 23, 2006, mother filed a letter in which she raises the following contentions: (1) she was arrested on June 4, 2005 for outstanding traffic warrants, not domestic violence; (2) she underwent drug testing on June 14, 2005, and the results of that test were negative; (3) a representative from the Department of Children and Family Services (DCSF) checked her home and children and found that the children had not been abused, that they had clean clothes and their own beds, and that the home had a refrigerator with food, running water and electricity; (4) she conducted a search of the court records concerning her arrest and could find no record of an arrest for domestic violence; (5) the social workers made false allegations about her; (6) she had enrolled in domestic violence, anger management, and parenting classes that had been approved by one social worker, but was told by another social worker that she had not enrolled in the correct programs; and (7) she had experienced a number of personal hardships in the past three years, including the death of her father and her grandmother.

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[1] All further statutory references are to the Welfare and Institutions Code.

On July 26, 2006, mother and father filed a joint supplemental brief in which they stated that mother had completed an anger management counseling program on June 28, 2006; father had full-time employment and was earning approximately $2,200 per month; and both mother and father had tested negative for drugs. In their supplemental brief, both parents requested that they be allowed to visit, live with, or live nearby Connor and Winona.

Father filed a letter on June 23, 2006, in which he contends that he was not adequately represented by his attorney in the juvenile court proceedings because the attorney never raised or argued any potential issues father raised.

Grandmother filed a letter on June 14, 2006, in which she states that the children were never abused or hit, that the children love their parents, grandmother, aunts and uncles. Grandmother requests that she be allowed to visit the children and have them live in her home.

B. Section 388 Petitions

Section 388 provides in relevant part: "Any parent . . . [of] a child who is a dependent child of the juvenile court . . . may, upon grounds of change of circumstance or new evidence, petition the court . . . to change, modify, or set aside any order of court previously made. . . ." To obtain the requested modification, the parent must demonstrate both a change of circumstances or new evidence, and that the proposed change is in the best interests of the child. (§ 388; Cal. Rules of Court, rule 1432(c), (f); *In re Casey D.* (1999) 70 Cal.App.4th 38, 47.) The parent bears the burden of proving the requested modification should be granted. (Cal. Rules of Court, rule 1432(f); *In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) A juvenile court's determination on a petition brought under section 388 will not be disturbed on appeal absent a clear abuse of discretion. (*Id.* at p. 318.) "Whether a previously made order should be modified rests within the dependency court's discretion, and its determination will not be disturbed on appeal unless an abuse of discretion is clearly established." (*In re Michael B.* (1992) 8 Cal.App.4th 1698, 1704.) Abuse of discretion is established if the determination is not

supported by substantial evidence. (*Michael U. v. Jamie B.* (1985) 39 Cal.3d 787, 796.) The party requesting the change of order has the burden of proof. (Cal. Rules of Court, rule 1432(f); *In re Michael B.*, supra, 8 Cal.App.4th at p. 1703.)

The juvenile court concluded that granting mother's and father's respective petitions to resume reunification services was not in the children's best interest. The juvenile court further concluded that granting father's alternative request that the children be placed with grandmother was not in the children's best interest. Factors to be considered in determining what is in the best interest of a child under section 388 include "(1) the seriousness of the problem which led to the dependency, and the reason for any continuation of that problem; (2) the strength of relative bonds between the dependent children to *both* parent and caretakers; and (3) the degree to which the problem may be easily removed or ameliorated, and the degree to which it actually has been." (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 532.)

Here, domestic violence and the lack of a safe and stable home were problems that led to the children's removal from their parents' care. When the children were initially detained, they were living in a converted garage on the same property as their grandmother and were exposed to violent confrontations between their parents. Both the parents' home and the grandmother's home had been the subject of several referrals to DCSF. At the time mother filed her section 388 petition, more than a year and a half after the children were initially detained, mother had yet to complete her court-ordered programs for anger management and parenting, and father had failed to enroll altogether. At the time father filed his section 388 petition, he had just enrolled in the court-ordered programs, and his visitation with the children had been sporadic. Visits with the maternal grandmother were even less frequent. Visitation records showed that maternal grandmother had attended no monitored visits with the children as of May 2005, and monitors recalled meeting her on one or two occasions. The children had developed a bond with their foster parents, who were willing to adopt, and the children expressed a desire to be adopted. There is ample support for the juvenile court's conclusion that resuming reunification or removing the children from their foster care placement and

placing them with their maternal grandmother was not in the children's best interest because it would undermine their need for stability and permanence. (See *In re Marilyn H.* (1993) 5 Cal.4th 295, 309 ["Once reunification services are ordered terminated, the focus shifts to the needs of the child for permanency and stability"].)

The denial of mother's and father's respective petitions was not an abuse of discretion.

C. Termination of Parental Rights

The order terminating parental rights is presumed to be correct. (*In re Sade C., supra,* 13 Cal.4th at p. 994.) Reversal is required only if the parent raises claims of reversible error, which are supported by argument and authority on each point. (*Ibid.*) "Under section 366.26, once the court determines a child is adoptable, it must terminate parental rights unless it finds one of the section 366.26, subdivision (c)(1) exceptions applies. [Citation.] The only exceptions to terminating parental rights are those prescribed by section 366.26, subdivision (c)(1). [Citation.]" (*In re Carl. R.* (2005) 128 Cal.App.4th 1051, 1070.) Mother and father do not dispute the findings that the children are adoptable and that the children's foster parents are willing and able to adopt them.

Neither mother nor father has established that any of the exceptions set forth in section 366.26, subdivision (c)(1) applies. There is no evidence that the social workers lied or falsified their reports; there is evidence in the record that deputies from the Los Angeles County Sherriff's Department responded to a domestic disturbance at mother's residence on June 6, 2004, and that the deputies subsequently arrested mother; father's current employment status, the fact that father's and mother's drug tests were negative, and that both parents eventually complied with the court's orders to enroll in parenting and domestic violence classes are matters that are not relevant at this stage of the proceedings; and although mother may have undergone a number of personal hardships in the past few years, those too are not relevant to the section 366.26 order. (*In re Carl R., supra,* 128 Cal.App.4th at p. 1070.) Mother and father have thus failed to establish

that any exception to terminating parental rights set forth in section 366.26, subdivision (c)(1) applies.

Father contends he was denied effective assistance of counsel in the proceedings below. "In general, the proper way to raise a claim of ineffective assistance of counsel is by writ of habeas corpus, not appeal. [Citations.] . . . [A]n ineffective assistance claim may be reviewed on direct appeal [only] where 'there simply could be no satisfactory explanation' for trial counsel's action or inaction. [Citation.]" (*In re Dennis H.* (2001) 88 Cal.App.4th 94, 98, fn. 1.) Usually "[t]he establishment of ineffective assistance of counsel most commonly requires a presentation which goes beyond the record of the trial. . . . Action taken or not taken by counsel at a trial is typically motivated by considerations not reflected in the record. . . . Evidence of the reasons for counsel's tactics, and evidence of the standard of legal practice in the community as to a specific tactic, can be presented by declarations or other evidence filed with the writ petition. [Citation.]" *In re Arturo A.* (1992) 8 Cal.App.4th 229, 243.) Father has not filed a habeas petition in this case, so our review is limited to the appellate record. We have reviewed the entire record, including the sealed transcript of two *Marsden* hearings held on September 22, 2005 and February 28, 2006, and conclude that father has failed to establish ineffective assistance of counsel. "'Where the ineffective assistance concept is applied in dependency proceedings . . . [f]irst, there must be a showing that "counsel's representation fell below an objective standard of reasonableness . . . [¶] . . . under prevailing professional norms." [Citations.] Second, there must be a showing of prejudice, that is, [a] "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." [Citation.]'" (*In re Athena P.* (2002) 103 Cal.App.4th 617, 628.) There is nothing in the record to indicate that father's counsel's representation fell below prevailing professional standards.

Grandmother was not a party to the section 366.26 proceeding and therefore lacks standing to challenge the termination of parental rights. (*In re Harmony B.* (2005) 125 Cal.App.4th 831, 838.)

E. Relative Placement Preference

Grandmother, although not a party, has standing to appeal the denial of her request that the children be placed with her pursuant to section 361.3.[2] Subdivision (a) of that statute provides in relevant part: "In any case in which a child is removed from the physical custody of his or her parents pursuant to section 361, preferential consideration shall be given to a request by a relative of the child for placement of the child with the relative." (§ 361.3, subd. (a).) Grandmother's appeal, however, is untimely. "Section 361.3 governs 'placement decisions at the time of removal from parental custody.' [Citation.]" (*In re Daniel D.* (1994) 24 Cal.App.4th 1823, 1834.) Grandmother did not timely appeal the propriety of the juvenile court's orders continuing the children in foster care rather than placing them with her, and those issues are not cognizable in this appeal. (*Ibid.*)

The orders denying mother's and father's section 388 petitions and terminating mother's and father's parental rights are affirmed.

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MOSK, J.

We concur.

TURNER, P. J.

ARMSTRONG, J.

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[2] We treat grandmother's letter, filed June 14, 2006, as an appeal of the denial of her request for relative placement preference under section 361.3. Grandmother's application for adoption, if such an application was filed, is not the subject of this appeal, as the adoption plan has not yet been finalized.